IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2491 OF 2007

Sujit Suresh Gangavane ....Petitioner
V/s.
The State of Maharashtra & Ors. ....Respondents

Mr.Y.S. Jahagirdar, Senior Counsel with R.K. Mendadkar with Mrs.H.K. Mandlik for the Petitioner.

Mr.V.P. Malwankar, AGP for the Respondents.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 25TH APRIL, 2007.

ORAL ORDER : (PER R.M. SAVANT, J)

1. Rule. Rule with the consent of the parties made returnable forthwith and heard.

2. This Petition filed under Article 226 of the Constitution of India impugns the order of the Caste Scrutiny Committee dated 28.2.2007. By the said order, the Petitioner’s claim of belonging to Thakar, Scheduled Tribe has been rejected.

3. Such of the facts which are necessary to be cited for adjudication of the issue raised in the Petition are stated thus :-

. The Petitioner came to be appointed as Shikshan Sevak in the New English School, Devbaug on 20.10.2003. The Petitioner's caste certificate was referred to the Committee for verification on 10.10.2003. The Petitioner had produced several documents including the certificate of validity granted to his blood relations from the paternal side by the same Committee. The Committee vide its order dated 11.6.2004, was pleased to invalidate the caste certificate of the Petitioner along with 200 others from the Sindhudurg District, who claimed to be belonging to Thakar, Scheduled Tribe.

. The Petitioner being aggrieved by the said order dated 11.6.2004, filed Writ Petition No.6048 of 2004, which came to be allowed by this Court and the order dated 11.6.2004, passed by the Committee came to be set-aside and the matter was relegated back to the Committee to reconsider the case of the Petitioner separately in the light of law laid down by this Court. The S.L.P. filed against the said order by the State came t be dismissed by the Apex Court on 28.8.2005. Since the Petitioner apprehended that his services would be terminated on account of non-submission of the caste validity certificate, the Petitioner filed Writ Petition in this Court which

Petition came to be disposed of by this Court vide its order dated 3.10.2006, directing the Committee to decide the caste claim expeditiously and in any event on or before 28.2.2007, pending such consideration, the Petitioner's services were protected.

4. Pursuant to the said order dated 30.10.2006, the Petitioner was asked to appear before the Committee on 22.2.2007. Accordingly the Petitioner appeared before the Committee for hearing on 22.2.2007 along with his advocate. The Petitioner sought cross-examination of the Research Officer, as according to the Petitioner, the Research Officer had submitted the enquiry report without examining the Petitioner and his parents, as contemplated under Sub-rule 5 Rule 2 of the Caste Certificate Rule. The Petitioner also filed a host of documents in support of his tribe claim.

5. As the vigilance enquiry was conducted in the case of Bhaskar Narayan Gangavane, who is the uncle of the Petitioner, the Committee thought it fit not to conduct the vigilance enquiry again. The said Vigilance report was sent to the Petitioner vide the Committee's letter dated 12.2.2004 and he was asked to remain personally present for hearing. the Petitioner

remained present and was also represented by the Chairman of Sindhudurg Zilla Thakar Samaj, Sindhudurg and one Bhaskar Narayan Gangavane. Incidently the Secretary of Sindhudurg Thakar Samaj, Sindhudurg has also represented the case of Thakar Samaj, Sindhudurg District earlier. The Vigilance Cell of the Committee had also brought detailed information about Thakars of Sindhudurg District.

6. The Committee considered the documents submitted by the Petitioner. The documents inter-alia disclosed the caste as Thakar. The Committee was of the view that the caste Thakar and tribe Thakar are different from each other. The caste of the Petitioner’s father in the school leaving certificate and the school register was shown as Hindu Thakar, Magas which depicts that he is not Thakar, Scheduled Tribe. In view of the documents produced by the Petitioner and in view of the law laid down by this Court as well as by the Apex Court, the affinity test became of crucial importance. The Committee was of the view that the tribe claim of the Petitioner as belonging to Thakar could not be considered relying only upon the documentary evidence but the same would have to be considered by considering the traits, characteristics and customs as disclosed by the

Petitioner. The Committee on the basis of the statement made by the Petitioner's uncle in respect of the traits, characteristics and customs as well as the information given by the General Secretary of the Sindhudurg Zilla Thakar Samaj, Sindhudurg came to a conclusion that the said information does not relate to Thakar belonging to Scheduled Tribe.

7. The Committee observed that the traditional occupations disclosed by the Petitioner's uncle and the said General Secretary to the Thakar like Fishing, Toiling, Begging, puppet shows, performing Nandis, stitching of godhadi and performing gondhal never had been the occupation of the true Thakars, Scheduled Tribes found in the State of Maharashtra. The surname disclosed on behalf of the Petitioner also do not match those of true Thakars, as also the names of God/Goddess and the list of festivals as mentioned, do not match with that of Thakars enumerated at Serial Nos.44 of the Presidential Order. Radhanrutya never had been the dance of the true Thakar, Scheduled Tribe. Thus according to the Committee, the information given on behalf of the Petitioner as regards the traits, characteristics and customs could not be accepted. The Committee therefore came to a conclusion that the Petitioner has not able to satisfy

the affinity test towards the Thakar, Scheduled Tribe.

8. On behalf of the Petitioner, it was contended that though the affinity test was crucial in such cases considering the information given on behalf of the Petitioner by his uncle as well as the Secretary of the Sindhudurg Zilla Thakar Samaj, Sindhudurg, the said test can be said to have been satisfied by the Petitioner. The learned counsel for the Petitioner relied upon the survey report of Thakar community in the Sindhudurg District of one R.K. Mutatkar. According to the learned counsel for the Petitioner, Shri Mutatkar is a renown Anthropologist. The learned counsel for the Petitioner further submitted that if the information given by the Petitioner is compared with the information given in the survey report, the same is almost identical to that appearing in the said survey report as regards the characteristics, customs, traits etc.

9. We have gone through the said survey report as also the information given by the Petitioner as regards the traits, characteristics and customs. The Committee has come to a conclusion that the Petitioner has not satisfied the affinity test on the basis of the information given on behalf of the Petitioner.

The Committee has merely observed that the information given by the Petitioner is not relating to Thakar tribe without elaborating as to why it is so. The Committee while not accepting the said information given on behalf of the Petitioner could have dealt with the said issue more elaborately, more so in view of its non-acceptance by it. The same has not been done by the Committee and the Committee has merely stated that the said information cannot be accepted and therefore, the Petitioner has not passed the affinity test. In our view when the affinity test had assumed crucial importance, the Committee should have gone in detail while dealing with the said issue.

10. Another aspect to be noted is that the Committee has merely observed that there is Thakar caste as well as Thakar tribe. Such surnames are also found in other communities. The Committee should have therefore been more specific about this issue also.

11. In that view of the matter, the impugned order of the Caste Scrutiny Committee would have to be set-aside and the matter would have to be relegated back to the Committee for a decision afresh. The Committee on such remand would be well advised to go into the issue of affinity more elaborately as also

the issue regarding Thakar caste and Thakar tribe. The Committee on such remand, would decide the issue within three months of the receipt of the order of this Court. Pending such consideration, the Petitioner’s services as Shikshan Sevak are protected.

12. Rule is accordingly made absolute in the aforesaid terms, with the parties to bear their respective costs.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)